

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES L. WOOD,)
)
 Plaintiff)
) No. 3:14-2157
 v.) Judge Trauger/Brown
) **Jury Demand**
 WAYNE CHANEY, et al.,)
)
 Defendants)

TO: THE HONORABLE ALETA A. TRAUGER

REPORT AND RECOMMENDATION

For the reasons stated below, the Magistrate Judge recommends that the claims against the Defendant Belch be dismissed without prejudice for failure to obtain service of process.¹

The Plaintiff filed his complaint against the Defendant Balch on November 3, 2014. Despite several attempts by the United States Marshals Service to serve this Defendant, the last summonses were returned as unexecuted in June 2015 (Docket Entries 84 and 85). The Plaintiff was cautioned (Docket Entry 94) that if he could not provide a better address for service on this Defendant by August 7, 2015, that the complaint was subject to dismissal.

The Plaintiff has provided no additional information concerning this Defendant and the Defendant remains unserved.

¹Given the one-year statute of limitations it may be that even though the dismissal is without prejudice, any claims against this officer will be barred by the applicable statute of limitations in the absence of appropriate tolling or other provisions of law.

LEGAL DISCUSSION

Federal Rule 4(m) provides that the Defendant must be served within 120 days of the filing of the lawsuit and the Court, on its own motion after notice to the Plaintiff, must dismiss the action without prejudice, or order that service be made within a specific time. The Magistrate Judge's order (Docket Entry 94) gave the Plaintiff until August 7, 2015, to provide a better address for this Defendant. More than 120 days have passed since the August 7th deadline. Accordingly, under Rule 4(m) the claims against this Defendant are subject to dismissal without prejudice.

RECOMMENDATION

For the reasons stated above, the Magistrate Judge recommends that all claims against the Defendant Balch be dismissed without prejudice for failure to obtain service of process.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has **14 days** from receipt of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have **14 days** from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within **14 days** of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S. Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

ENTER this 26th day of January, 2016.

/s/ Joe B. Brown
JOE B. BROWN
United States Magistrate Judge